

A Resolution

NO. 3483-05-2007

SUPPORTING A MEMORANDUM OF AGREEMENT BETWEEN THE CITY OF FORT WORTH AND HANSON ROOF TILE, INC., FOR THE PROVISION OF A VISUAL ENVIRONMENTAL BUFFER BETWEEN A PERMANENT CONCRETE BATCH PLANT AND THE AFFECTED AREA

WHEREAS, on December 27, 2006, Hanson Roof Tile, Inc., applied to the Texas Commission on Environmental Quality ("TCEQ") for an Air Quality Standard Permit by registration number 80701; and

WHEREAS, the granting of such permit by TCEQ would allow for the construction of a concrete batch plant and associated roof tile manufacturing plant located at 610 Riverside Drive, Fort Worth, Texas; and

WHEREAS, the proposed concrete batch plant and associated roof tile manufacturing plant will emit air contaminants known as particulate matter such as but not limited to aggregate, cement, road dust and particulate matter less than ten (10) microns in diameter; and

WHEREAS, the City has health and safety concerns with regard to the particulate matter which shall be released by the construction and operation of the concrete batch plant and associated roof tile manufacturing plant; and

WHEREAS, TCEQ shall issue a standard permit for certain concrete batch plants pursuant to the requirements in the Texas Health and Safety Code Section 382.05198; and

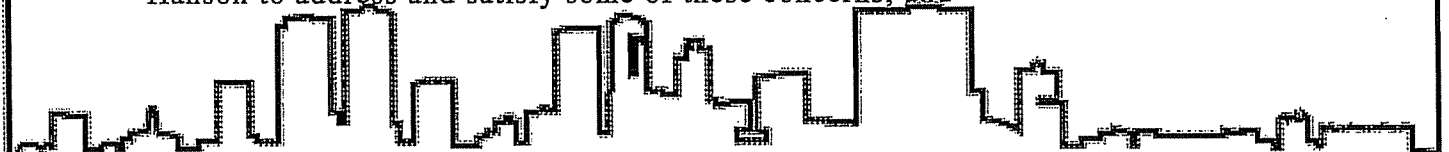
WHEREAS, Title 30 of the Texas Administrative Code Chapter 55.154(c)(2) (hereinafter "30 TAC 55.154(c)(2)") requires TCEQ to conduct a public meeting if a member of the legislature who represents the general area in which the facility is located or proposed to be located requests that a public meeting be held; and

WHEREAS, State Representative Lon Burnam, who represents affected citizens near and around 610 Riverside Drive, Fort Worth, Texas, has requested a public meeting be held by TCEQ; and

WHEREAS, on October 3, 2006, the City Council adopted Ordinance No. 17228-10-2066 with the intent "to protect the public health and safety and general welfare of the citizens of the City of Fort Worth" and to promote orderly development, codified in the City Code as *Appendix A, Chapter 6 "Development Standard," Article 3 "Landscaping and Buffers"* (hereinafter "City Tree Standards"); and

WHEREAS, Section 6.301 (K)(1)(d)(6) defines as one objective of the City Tree Standards to be to "aid in stabilizing the environment's ecological balance by contributing to the process of air purification"; and

WHEREAS, City has worked cooperatively with the affected citizens in the general area and Hanson to address and satisfy some of these concerns; and



CITY OF FORT WORTH

WHEREAS, the resolution of these concerns would eliminate the need for a public meeting to be held by TCEQ; and

WHEREAS, as far as is permissible by all applicable laws, the Parties mutually desire to memorialize the agreement made by the City and Hanson Roof Tile, Inc., to protect the health and safety of the affected citizens in the general area related to the construction and operation of the concrete batch plant and associated roof tile manufacturing plant; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FORT WORTH, TEXAS:

1.

That the City of Fort Worth shall enter into a Memorandum of Agreement with Hanson Roof Tile, Inc., attached as Exhibit A, for the provision of a visual environmental buffer between the permanent concrete batch plant and associated roof tile manufacturing plant to be located at 610 Riverside Drive, Fort Worth, Texas, and the affected area.

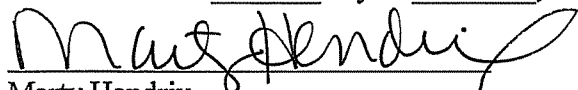
2.

That the City of Fort Worth shall make a written request to State Representative Lon Burnam for the withdrawal of his petition to TCEQ for a public meeting regarding the granting of an Air Quality Standard Permit. In consideration of such request, Hanson Roof Tile, Inc., at its sole cost and expense shall comply with all requirements for landscaping and buffers as described in the City Tree Standards, as they may be amended at the time of permitting; and shall expend an additional \$15,000 beyond such costs to provide for additional seven inch caliper trees to act as a visual environmental buffer between the concrete batch plant and associated roof tile manufacturing plant and the affected area.

3.

That the City of Fort Worth and Hanson Roof Tile, Inc., shall enter into a binding agreement, establishing certain rights and duties for both Parties as allowable and enforceable by law. Nothing in the agreement shall circumvent or supercede the authority of TCEQ or any applicable laws.

ADOPTED this 1st day of May, 2007.



Marty Hendrix
City Secretary



CITY OF FORT WORTH

STATE OF TEXAS

COUNTIES OF TARRANT,
DENTON AND WISE

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MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT ("MOA") is entered into by and between the City of Fort Worth, Texas, a home-rule municipal corporation situated in Tarrant, Denton and Wise Counties, Texas, hereinafter called "City" acting herein by and through Libby Watson, its duly authorized Assistant City Manager, and Hanson Roof Tile, Inc., a corporation situated in Irving, Texas, hereinafter called "Hanson", acting herein by and through Dylan Walters, its duly authorized Vice President. Fort Worth and Hanson are collectively referred to herein as the "Parties".

WITNESSETH:

WHEREAS, on December 27, 2006, Hanson Roof Tile, Inc. applied to the Texas Commission on Environmental Quality ("TCEQ") for an Air Quality Standard Permit by registration number 80701;

WHEREAS, the granting of such permit by TCEQ would allow for the construction of a concrete batch plant and associated roof tile manufacturing plant located at 610 Riverside Drive, Fort Worth, Texas;

WHEREAS, the proposed concrete batch plant and associated roof tile manufacturing plant will emit air contaminants known as particulate matter such as but not limited to aggregate, cement, road dust and particulate matter less than ten (10) microns in diameter;

WHEREAS, the City has health and safety concerns with regard to the particulate matter which shall be released by the construction and operation of the concrete batch plant and associated roof tile manufacturing plant;

WHEREAS, TCEQ shall issue a standard permit for certain concrete plants pursuant to the requirements in the Texas Health and Safety Code Section 382.05198;

WHEREAS, Title 30 of the Texas Administrative Code Chapter 55.154(c)(2) (hereinafter "30 TAC 55.154(c)(2)") requires TCEQ to conduct a public meeting if a member of the legislature who represents the general area in which the facility is located or proposed to be located requests that a public meeting be held;

WHEREAS, State Representative Lon Burnam who represents affected citizens near and around 610 Riverside Drive, Fort Worth, Texas has requested a public meeting be held by TCEQ;

WHEREAS, City has worked cooperatively with the affected citizens in the general area and Hanson to address and satisfy some of these concerns;

WHEREAS, the resolution of these concerns would eliminate the need for a public meeting to be held by TCEQ;

WHEREAS, on October 3, 2006, the City Council adopted Ordinance No. 17228-10-2066 with the intent "to protect the public health and safety and general welfare of the citizens of the City of Fort Worth" and to promote orderly development, codified in the City Code as *Appendix A, Chapter 6 "Development Standards", Article 3 "Landscaping and Buffers" (hereinafter "City Tree Standards")*;

WHEREAS, Section 6.301 (K)(1)(d)(6) defines as one objective of the City Tree Standards to be to "aid in stabilizing the environment's ecological balance by contributing to the process of air purification";

WHEREAS, as far as is permissible by all applicable laws, the Parties mutually desire to memorialize the agreement made by the City and Hanson to protect the health and safety of the affected citizens in the general area related to the construction and operation of the concrete batch plant and associated roof tile manufacturing plant;

NOW THEREFORE, for and in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, the Parties hereto agree as follows:

1. Purpose

The purpose of this MOA is to set out the terms and conditions to be undertaken by Hanson to provide for a visual environmental buffer within and between the permanent concrete batch plant and associated roof tile manufacturing plant to be located at 610 Riverside Drive, Fort Worth, Texas and the affected citizens of the general area. Hanson has submitted an application to TCEQ to acquire a standard permit for such activity pursuant but not limited to the Texas Health and Safety Code Sections 382.05195 and 382.05198. State Representative Lon Burnam (the "Representative") has requested a public meeting pursuant to 30 TAC 55.154(c)(2) (the "Request") to address concerns of the affected citizens in the general area of the proposed concrete batch plant prior to TCEQ issuing such permit. The City has met with Hanson and has reached an agreement on certain terms and conditions which satisfy the

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And Hanson Roof Tile for the
Concrete Batch Plant at
610 Riverside Dr.

concerns of the citizens of the general area thereby eliminating the need for a public meeting to be held by TCEQ. In exchange for the City's formal written request to the Representative for the withdraw of the Request, Hanson agrees to abide by the following terms and conditions. This MOA shall be a binding agreement, establishing certain rights and duties for both Parties, and all covenants herein shall be enforceable as allowable by law. Nothing in this agreement shall circumvent or supercede the authority of TCEQ or any applicable laws.

2. **Hanson's Responsibilities**

- a. Hanson shall comply with all requirements for the construction and/or operation of a permanent concrete batch plant and associated roof tile manufacturing plant at 610 Riverside Drive, Fort Worth, Texas as set by TCEQ and the Texas Health and Safety Code, and shall, at its sole cost and expense, comply with the City Tree Standards, as they may be amended at the time of permitting.
- b. Furthermore, at its sole cost and expense, Hanson shall expend an additional \$15,000 beyond the cost to provide for the minimum number of trees required by the City Tree Standards and Section 2a above, for the provision of additional seven inch caliper trees to act as a visual environmental buffer between the concrete batch plant and associated roof tile manufacturing plant and the affected area. The landscape and buffer plan shall be attached as Exhibit A and is fully incorporated into this agreement upon approval of the plan and issuance of an urban forestry permit by the City.
- c. Hanson shall maintain such landscaping and buffers throughout the life of the concrete batch plant and associated roof tile manufacturing plant and shall make adjustments and/or improvements as is necessary.

3. **City Responsibility**

The City shall make a written request to the Representative to withdraw his request to the TCEQ for a public meeting for the issuance of an Air Quality Standard Permit authorizing the construction of a permanent concrete batch plant and associated roof tile manufacturing plant at 610 Riverside Drive, Fort Worth, Texas. Such request shall be made to TCEQ and filed with the City Secretary as Exhibit B to this agreement after approval of the landscape and buffer plan by the City.

4. **No Third-Party Beneficiaries**

This MOA shall inure only to the benefit of the Parties hereto and third persons not privy hereto shall not, in any form or manner, be considered a third party beneficiary of this MOA.

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610 Riverside Dr.

5. Non-assignability

Except as otherwise expressly provided herein, this MOA is non-assignable, and any unauthorized purported assignment or delegation of any duties hereunder, without the prior written consent of the other Party, shall be void and shall constitute a material breach of this MOA.

6. Entirety

This MOA and all attachments incorporated herein by reference constitute the entire MOA by the Parties hereunder, and any prior or contemporaneous oral or written agreements shall be replaced or superseded by this MOA.

7. Severability

In case any one or more of the provisions contained in the MOA shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this MOA, and this MOA shall be construed as if such invalid, illegal, or unenforceable provisions had never been contained herein.

8. Venue

This MOA shall be construed under and in accordance with the laws of the State of Texas, and the venue for any litigation arising from this MOA shall be in Tarrant County, Texas.

9. Authorization

The undersigned officers and/or agents of the Parties hereto are properly authorized officials and have the necessary authority to execute this MOA on behalf of the Parties hereto, and each party hereby certifies to the other that any necessary actions extending such authority have been duly passed and are now in full force and effect.

10. Notices

Any notices (unless otherwise specified herein), bills, invoices or reports required by this MOA shall be sufficient if sent by the Parties in the United States mail, postage paid, to the address noted below:

If to City:

City Manager's Office
City of Fort Worth
1000 Throckmorton

MOU between City
And Hanson Roof Tile for the
Concrete Batch Plant at
610 Riverside Dr.

Fort Worth, Texas 76102

Copy to: City Attorney's Office
City of Fort Worth
1000 Throckmorton
Fort Worth, Texas 76102

If to Hanson:

EXECUTED in triplicate in Fort Worth, Tarrant County, Texas.

CITY OF FORT WORTH

HANSON ROOF TILE, INC.

LIBBY WATSON
ASSISTANT CITY MANAGER
DATE: _____

Dylan Walters

DYLAN WALTERS
VICE PRESIDENT
DATE: 4/25/07

APPROVED AS TO FORM AND
LEGALITY

CHRISTA R. LOPEZ
ASSISTANT CITY ATTORNEY

ATTEST

WITNESSETH

MARTY HENDRIX
CITY SECRETARY

BY: John A. Tolman

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